

BASICS FOR PB AND ZBA MEMBERS

NH OEP Annual Planning & Zoning Conference

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LAND USE BOARD ORGANIZATION AND PROCEDURE

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LOCAL PLANNING BOARDS ORGANIZATION AND PROCEDURE

1. GETTING PERSONALLY ORGANIZED.

1.1 Have the basic informational materials.

For Planning Board Members.

- Subdivision Regulations/Site Plan Review Regulations.
- Zoning Ordinance.
- Master Plan.
- Board Rules of Procedure.
- Capital Improvements Program.
- Current Planning and Land Use Legislation Handbook.
- Local Earth Excavation Regulations.

For ZBA Members.

- Zoning Ordinance.
- Board Rules of Procedure.
- OSP Board of Adjustment Handbook.

1.1 Understand your job.

Planning Board Responsibilities.

- Master Planning.
- Compiling Capital Improvements Program.
- Growth Management.
- Zoning Ordinance.
- Subdivision and Site Plan Regulations.
- Review of Applications.
- Official Map.
- Earth Excavation Permits.
- Special Use Permits.
- Special Planning Studies.

ZBA Responsibilities.

- Variance applications.
- Special exception applications.
- Administrative appeals.
- Equitable waivers of dimensional requirements.
- Building Code appeals.
- RSA 674:41 appeals.
- Other.

1.3 Get yourself organized.

- Notebook or brief case.
- Calendar.

2. ORGANIZATION OF PLANNING BOARDS.

2.1 Establishment of Boards. (RSA 673:1)

- By legislative body (i.e. vote of town meeting).
- ZBA exists only because you have a zoning ordinance. If you have zoning, you must have a ZBA.
- Both are local options. Having planning and zoning is not mandated by statute.

2.2 Membership.

A. Planning Boards. (RSA 673:2).

- Cities. 9 members (2/3 ex-officio, 6/7 appointed).
- Town Council Towns. (7 or 9). See charter.
- Other Towns. (5 or 7).
- In towns, one is ex-officio. A selectmen or admin official appointed by the selectmen.

B. Boards of Adjustment (RSA 673:3).

- 5 members, by statute.

C. Election vs. Appointment.

- In Towns PB and ZBA can be elected or appointed.
- This can switch from one to another and back again.
- This vote is by official ballot for PB's, but not for ZBA.

D. Terms. (RSA 673:5).

- 3 years, staggered for regular members.
- Varies for ex-officio – 1 year or 4 months or full term.

E. Alternates. (RSA 673:6)

- As many as five are allowed for ZBA's and PB's.
- If land use board is appointed, alternates are appointed by appointing authority. Otherwise, the board chooses them.
- Terms are staggered.
- When do alternates sit? (RSA 673:11).
 - Alternates replace absent members. Chair designates. They do not fill temporarily vacant positions.
 - Designation is mandatory.
 - Rules of Procedure could address method of designating alternates to fill absences. Would this control over Chairs choice?
 - Only ex-officio alternate may sit for absent ex-officio member.

F. Multiple Public Service. (RSA 676:7)

- PB members can be on other boards, so long as not more than 1 PB member on the other board.
- In cities, an appointed PB member may not hold any other municipal office except 1 on ZBA, 1 on HDC and 1 on conservation commission are allowed.
- Is cross-representation desirable?
- Watch out for conflict of interest on certain ZBA appeals.

G. Vacancies. (RSA 673:12)

- Elected members positions filled by land use board until next election. Then election for unexpired portion of term.
- Appointed members positions filled by appointing body for remainder of term.

H. Removal. (RSA 673:13)

- Only after a public hearing.
- Requires written finding of inefficiency, neglect of duty, or malfeasance.
- Removal power lies with appointing authority or with selectmen for elected boards.

2.3 Officers. (RSA 673:8)

- Must have a chairman. (RSA 673:8)
- Other officers are optional.
- Vice-Chairman and Clerk are typical.
- Terms of officers are one year. No term limits.
- Ex-officio member cannot be chairman.

2.4 Meetings. (RSA 673:10)

- Planning Bd. must have at least one regular meeting per month.
- Board of adjustment meets at call of chair or otherwise as board may determine.
- Joint meetings are allowed.

2.5 Rules of Procedure. (RSA 676:1)

- Adoption required by statute.
- Must be filed with Town Clerk.
- Content: "Methods of Conducting Business."
 - Order of business.
 - Election of officers.
 - Hearing procedures.
 - Conflict of interest procedures.
 - Record keeping responsibilities.

2.6 Staff/Finances. (RSA 673:16)

- PB may hire its own consultants and employees (independent of selectmen).
- However, employees are subject to rules for town employees.
- PB has control over its own expenditures (does not report to Selectmen).
- Can accept gifts, grants, contributions in accordance with town policies.
- Can put application fees and other fees into a special account.
- Can require applicants to pay for special investigative studies. RSA 676:4, I(g).

2.7 Miscellaneous.

- ZBA Chair can subpoena witnesses and administer oaths, (RSA 673:15), but planning board chair may not.
- Planning Board can be abolished by town vote.
 - Takes a petition of 100 or 1/10 of registered voters (whichever fewer).
 - Petition puts the question on ballot.
 - Abolishing planning board terminates the zoning ordinance, after 2 years.
 - In city/town council government: charter determines method.

3. ZONING ORDINANCE AMENDMENT PROCEDURE. (RSA Ch. 675).

3.1 How?

- In Towns, there are three ways zoning amendments may evolve:
 - From the planning board.
 - By citizen petition of 25 or more registered voters.
 - By a petition from the selectmen.
- These are ballot questions. Deliberative session does not discuss them.
- In cities, charter or an ordinance will determine the method.

3.2 When?

- Usually at the annual town meeting in March.
- However, selectmen may call a special town meeting to vote on a zoning amendment.

3.3 Citizen Petitions.

- Window of Opportunity 120 - 90 days before town meeting.
- PB must hold a hearing and recommend whether voters should approve or not approve the amendment. PB recommendation is printed on the ballot.
- Can a petition be amended? Withdrawn?

3.4 Planning Board Must Hold a Public Hearing.

- 10 days posted/published notice.
- Second public hearing required if amendment is substantially altered. This must be at least 14 days after first hearing.
- Zoning amendment petitions and selectmen's petitions also must have a hearing.
- In SB 2 towns, last day for hearings is third Tuesday of January.
- Posting the notice of a hearing puts amendment in effect, pending town vote.

3.5 Final Amendment Filed with Town Clerk.

- By 5th Tuesday before Town Mtg. in most towns, but by last Monday of January in an SB 2 town.
- Voting by official ballot? Who drafts the wording of question?

3.6 Protest Petitions.

- Force a 2/3 majority vote on a zoning amendment.
- Apply only to zoning map changes, or where a text amendment affects not more than 1/3 of land area of town.
- Submitted by owners of 20% of area of lots included in change, or owners of 20% of area within 100 feet adjacent to area included in change. Streets, government land not included in calculation.
- Must be submitted not later than 7 days before the town meeting.